

APR 10 2008

CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MICHAEL EARL JEFFERSON, a/k/a  
Bobo,

Defendant - Appellant.

No. 04-50565

D.C. No. CR-03-00689-RGK-07

MEMORANDUM\*

Appeal from the United States District Court  
for the Central District of California  
R. Gary Klausner, District Judge, Presiding

Submitted March 3, 2008\*\*  
Pasadena, California

Before: GIBSON,\*\*\* O'SCANNLAIN, and GRABER, Circuit Judges.

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\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

\*\*\* The Honorable John R. Gibson, Senior United States Circuit Judge for the Eighth Circuit, sitting by designation.

Michael Earl Jefferson appeals from the sentence imposed following his conviction for one count of conspiracy to possess with intent to distribute cocaine and cocaine base, in violation of 21 U.S.C. § 846, and one count of possession with intent to distribute cocaine and cocaine base, in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(B)(iii). The facts are known to the parties and need not be repeated here.

Because Jefferson's plea agreement expressly conferred upon the government the "exclusive judgment" to determine whether to move for a sentence reduction, the government did not breach the agreement. Additionally, the government's grounds for failing to move for such reduction were not arbitrary. *See United States v. Espinoza-Cano*, 456 F.3d 1126, 1136 (9th Cir. 2006).

**AFFIRMED.**